

HOGAN & HARTSON
L.L.P.

ORIGINAL

EX PARTE OR LATE FILED

LINDA L. OLIVER
PARTNER
DIRECT DIAL (202) 637-6527

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910

September 30, 1999

BY HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S. W.
Washington, D.C. 20554

RECEIVED
SEP 30 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Notice of Ex Parte Communication Regarding the
SBC/Ameritech Merger Application, CC Docket No. 98-141**

Dear Ms. Salas:

Yesterday, on behalf of the Competitive Telecommunications Association ("CompTel"), the undersigned of Hogan and Hartson L.L.P met with Suzanne M. Tetreault, Deputy Associate General Counsel, Administrative Law Division, and Susan Aaron, Office of General Counsel, regarding the pending merger application of SBC and Ameritech.

The purpose of the meeting was to discuss CompTel's position on the proposed merger, including CompTel's views on the proposed conditions to the merger submitted by SBC and Ameritech on July 1 (and later revised). The points made in CompTel's July 19 comments, in the attached August 25, 1999, ex parte letter, and in the attached handout, were discussed at the meetings.

No. of Copies rec'd 012
List ABCDE

BRUSSELS BUDAPEST LONDON MOSCOW PARIS* PRAGUE WARSAW
BALTIMORE, MD BETHESDA, MD COLORADO SPRINGS, CO DENVER, CO LOS ANGELES, CA McLEAN, VA

*Affiliated Office

HOGAN & HARTSON L.L.P.

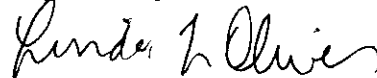
Ms. Magalie R. Salas

September 30, 1999

Page 2

I have hereby submitted two copies of this notice to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided). Please contact the undersigned if you have any questions.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda L. Oliver".

Linda L. Oliver

Counsel for the Competitive
Telecommunications Association

Enclosures

cc: Suzanne M. Tetreault
Susan Aaron

HOGAN & HARTSON
L.L.P.

LINDA L. OLIVER
PARTNER
DIRECT DIAL (202) 637-6527

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910

August 25 1999

BY HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S. W.
Washington, D.C. 20554

**Re: Notice of Ex Parte Communication Regarding the
SBC/Ameritech Merger Application, CC Docket No. 98-141**

Dear Ms. Salas:

Yesterday, on behalf of the Competitive Telecommunications Association ("CompTel"), the undersigned of Hogan and Hartson L.L.P., and Carol Ann Bischoff, Executive Vice President, CompTel, met separately with John E. Ingle and Jeffrey S. Lanning of the General Counsel's Office and with Linda Kinney, Legal Advisor to Commissioner Susan Ness, regarding the pending merger application of SBC and Ameritech.

The purpose of the meetings was to discuss CompTel's position on the proposed merger, including CompTel's views on the proposed conditions to the merger submitted by SBC and Ameritech on July 1. The points made in CompTel's July 19 comments, and in the attached handout, were discussed at the meetings.

In addition, CompTel emphasized that a number of the proposed conditions are unlawful and should be revised to conform with the requirements of the 1996 Act and the Commission's rules. These conditions include the limitation on availability of network element combinations (the "UNE platform"), restrictions on the use of discounted loops; and limitations on the availability of discounted

wholesale rates. In general, these "promotional" offerings are available only to provide services to residential customers, and only if those services are not advanced services.

These provisions, first, are unlawfully discriminatory in violation of Section 251(c)(3) of the Act and Sections 51.313.(a) and 51.319 of the Commission's rules, because they draw unlawful distinctions among carriers based on the customers they intend to serve and the types of services they intend to provide. 47 U.S.C. § 251(c)(3); 47 C.F.R. §§ 51.313(a), 51.319. Second, the conditions impose unlawful restrictions on requesting carriers' use of unbundled network elements, in violation of Section 251(c)(3) of the Act and Sections 51.309(a) and 51.307(c). 47 C.F.R. §§ 51.309(a), 51.307(c). Third, the discounted loop rate violates the UNE pricing provisions of Section 251(d)(1) of the Act, which requires that unbundled network element rates be both based on cost *and* nondiscriminatory. 47 U.S.C. § 251(d)(1)(a), (b). Differences in loop rates that are not based on cost are by discriminatory in violation of the Act. '

In addition, the restrictions on the availability on UNE combinations violate the Act, as interpreted by the Supreme Court in AT&T v. Iowa Utilities Board, ___ U.S. ___, 119 S.Ct. 721 (1999), and the FCC's rule regarding access to combinations of network elements, 47 U.S.C. § 315(b). Under the proposed condition, UNE combinations are available *only if* the requesting carrier provides residential POTS or BRI-ISDN services. Such a restriction is unlawful.

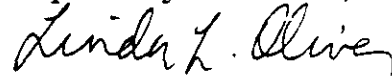
CompTel also pointed out that the Commission should not reach a determination in this merger case regarding whether the advanced services separate affiliate proposed by SBC/Ameritech should be considered a "successor or assign" for purposes of Sections 3(4)(a) or 251(h) of the Act, 47 U.S.C. §§ 153(4)(a), 251(h). This question should be decided on the basis of a complete record in a proceeding designed to address this issue -- either the Advanced Services proceeding (CC Docket No. 98-147) or the CompTel Section 251(h) petition (CC Docket No. 98-39).

Each of the above points is discussed more fully in CompTel's July 19 comments.

HOGAN & HARTSON L.L.P.
Ms. Magalie R. Salas
August 25, 1999
Page 3

I have hereby submitted two copies of this notice to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided). Please contact the undersigned if you have any questions.

Respectfully submitted,

A handwritten signature in cursive script, reading "Linda L. Oliver".

Linda L. Oliver
Counsel for the Competitive
Telecommunications Association

Enclosures

cc: John Ingle
Jeffrey Lanning
Linda Kinney

**Major Deficiencies in Proposed Conditions
on SBC/Ameritech Merger Application**

- Unlawful and anticompetitive limitations on access to combinations of network elements (UNE-platform).
- Discriminatory restrictions limiting the availability of discounted loop price.
- Weak separate affiliate structure for advanced services, which permits substantial joint activity, sharing, and cross-subsidization.
- No defined structure of clear relationships between SBC/Ameritech's ILEC affiliates and its national CLEC subsidiary, the National Local Company (NatLoCo).
- Unlawful and inappropriate limitations on DSL line-sharing.
- Failure of performance standards penalty payments to go to the harmed parties: the competitive local exchange carriers competing with SBC/Ameritech.

In addition to strengthening the proposed conditions to address these and other deficiencies, the Commission should also make explicit that these conditions are not relevant to, nor do they prejudice, action by the FCC in other rulemakings (such as the network element remand, DSL line-sharing, advanced services separate affiliate, and Section 271 proceedings).

Major Deficiencies in Proposed Conditions on SBC/Ameritech Merger Application

- Unlawful and anticompetitive limitations on access to combinations of network elements (UNE-platform).
- Discriminatory restrictions limiting the availability of discounted loop price.
- Weak separate affiliate structure for advanced services, which permits substantial joint activity, sharing, and cross-subsidization.
- No defined structure of clear relationships between SBC/Ameritech's ILEC affiliates and its national CLEC subsidiary, the National Local Company (NatLoCo).
- Unlawful and inappropriate limitations on DSL line-sharing.
- Failure of performance standards penalty payments to go to the harmed parties: the competitive local exchange carriers competing with SBC/Ameritech.

In addition to strengthening the proposed conditions to address these and other deficiencies, the Commission should also make explicit that these conditions are not relevant to, nor do they prejudice, action by the FCC in other rulemakings (such as the network element remand, DSL line-sharing, advanced services separate affiliate, and Section 271 proceedings).